



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-802]

Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Notice of Implementation of Determination under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On July 18, 2016, the Department of Commerce (“Department”) issued its final determination under a section 129 proceeding regarding the fourth administrative review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam (“Vietnam”) with respect to the Minh Phu Group. On July 18, 2016, the U.S. Trade Representative (“USTR”) instructed the Department to implement the 129 Final Determination. As a result, the Department is now implementing its determination.

DATES: Effective July 18, 2016.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-6905.

SUPPLEMENTARY INFORMATION:

Nature of the Proceeding

Section 129 of the Uruguay Rounds Agreement Act (“URAA”)¹ allows the Department to amend, rescind, or modify a determination found by a WTO dispute settlement panel or the Appellate Body to be inconsistent with U.S. obligations under the Antidumping Agreement.

¹ Citation to “section 129” refers to section 129 of the URAA, codified at 19 U.S.C 3538.

Specifically, section 129(b)(2) provides that, “notwithstanding any provision of the Tariff Act of 1930 . . . ,” within 180 days after receipt of a written request from the U.S. Trade Representative, the Department shall issue a determination that would render its actions not inconsistent with an adverse finding of a WTO panel or the Appellate Body.² The Statement of Administrative Action, URAA, H. Doc. 316, Vol. 1, 103d Cong. (1994) (“SAA”), refers variously to such a determination by the Department as a “new,” “second,” and “different” determination.³ After consulting with the Department and the appropriate congressional committees, the USTR may direct the Department to implement, in whole or in part, the new determinations made under section 129 of the URAA.⁴ Pursuant to section 129(c) of the URAA, the new determinations shall apply with respect to unliquidated entries of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date on which the USTR directs the Department to implement the new determinations.⁵ This determination may be subject to judicial review separate and apart from judicial review of the Department’s original determination.⁶

Background

At the written request of USTR, the Department informed interested parties on May 20, 2016, that it was initiating a proceeding under section 129 of the URAA to implement certain findings of the WTO dispute settlement panel in United States - Anti-Dumping Measures on Certain Frozen Warmwater Shrimp from VietNam (WTO/DS429) (“Panel Report”).⁷ On May

² See 19 U.S.C. 3538(b)(2).

³ See SAA at 1025, 1027.

⁴ See 19 U.S.C. 3538(b)(4).

⁵ See 19 U.S.C. 3538(c).

⁶ See 19 U.S.C. 1516a(a)(2)(B)(vii).

⁷ See Letter from USTR, re: “Request to Comply with WTO Panel Report,” dated May 20, 2016. See also Letter from the Department to All Interested Parties, re: “Initiation of DS429,” dated May 20, 2016.

20, 2016, the Department issued its preliminary determination in this proceeding⁸ in which the Department recalculated the weighted-average dumping margin for the Minh Phu Group⁹ from the AR4 Amended Final¹⁰ by eliminating the denial of offsets for non-dumped sales

On July 6, 2016, the Department solicited comments from interested parties regarding the Preliminary 129 Determination, and also released the draft revocation instructions with a proposed importer and exporter certification requirement.¹¹ On July 13, 2016, the Minh Phu Group filed comments regarding the trade names listed for revocation in the Prelim Comment Memo at Attachment I.¹² Consequently, the Department issued the 129 Final Determination on July 18, 2016.¹³

On July 18, 2016, the USTR notified the Department that, consistent with section 129(b)(3) of the URAA, consultations with the Department and the appropriate congressional committees with respect to the 129 Final Determination have been completed. As a result, in

⁸ See Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Enforcement and Compliance, re: “Preliminary Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam,” dated May 20, 2016 (“129 Preliminary Determination”). See also Memorandum to the File, from Irene Gorelik, Senior Analyst, Office V, re: “Preliminary Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam (“Vietnam”)” (“MPG 129 Prelim Memo”), dated May 20, 2016.

⁹ For purposes of this proceeding, the “Minh Phu Group” includes the following companies: (1) Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.), (2) Minh Phu Seafood Corp., (3) Minh Phu Seafood Corporation, (4) Minh Phu Seafood Pte, (5) Minh Qui Seafood, (6) Minh Qui Seafood Co., Ltd., (7) Minh Qui, (8) Minh Phat Seafood Co., Ltd., (9) Minh Phat, (10) Minh Phat Seafood, (11) Minh Phat Seafood Corp., (12) Minh Phu Hau Giang Seafood Joint Stock Company, (13) Minh Phu Hau Giang Seafood Co., Ltd., (14) Minh Phu Hau Giang Seafood Corp., and (15) Minh Phu Hau Giang Seafood Processing Co., Ltd. See 129 Final Determination.

¹⁰ See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 47771 (August 9, 2010) (“AR4 Final”) and Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Amended Final Results of Antidumping Duty Administrative Review, 75 FR 61122 (October 4, 2010) (“AR4 Amended Final”).

¹¹ See Memorandum to the File from Irene Gorelik, Senior Analyst, Office V, re: “Schedule for Comments on the Section 129 Preliminary Determination and Release of Draft Revocation Instructions with Importer Certification Requirement for Comment,” dated July 6, 2016 (“Prelim Comment Memo”).

¹² See Letter from the Minh Phu Group, re: “Minh Phu Group’s Comments on Draft Revocation Instructions,” dated July 13, 2016.

¹³ See Memorandum from Christian Marsh to Paul Piquado, re: “Final Determination of the Proceeding under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam,” dated July 18, 2016 (“129 Final Determination”).

accordance with section 129(b)(4) of the URAA, USTR directed the Department to implement this determination.¹⁴

Implementation of the 129 Final Determination

Pursuant to the USTR Implementation Letter, the 129 Final Determination is hereby implemented and adopted by this notice. A list of the issues discussed in the 129 Final Determination are attached as an Appendix to this notice. The 129 Final Determination is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). Access to ACCESS is available to registered users at <http://access.trade.gov>, and is available to all parties in the Central Records Unit, room B8024 of the main Commerce building. A complete version of the memorandum can be accessed directly on the Internet at <http://enforcement.trade.gov/download/section129/full-129-index.html>. The signed 129 Final Determination and the respective electronic version of the memorandum are identical in content.

Final Weighted-Average Dumping Margin

As a result of the above, the AR4 Amended Final recalculated weighted-average dumping margin for the Minh Phu Group, unchanged from the Preliminary 129 Determination, is:

Producer and Exporter	Section 129 Results
Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.), aka Minh Phu Seafood Corp., aka Minh Phu Seafood Corporation, aka Minh Phu Seafood Pte, aka Minh Qui Seafood, aka Minh Qui Seafood Co., Ltd., aka Minh Qui, aka	0.00 %

¹⁴ See Letter from USTR, re: "Request to Implement Final Determination," dated July 18, 2016 ("USTR Implementation Letter").

Minh Phat Seafood Co., Ltd., aka Minh Phat, aka Minh Phat Seafood, aka Minh Phat Seafood Corp., aka Minh Phu Hau Giang Seafood Joint Stock Company, aka Minh Phu Hau Giang Seafood Co., Ltd., aka Minh Phu Hau Giang Seafood Corp., aka Minh Phu Hau Giang Seafood Processing Co., Ltd.	
--	--

Partial Revocation of the Antidumping Duty Order

Because the Department has re-calculated a weighted-average dumping margin of zero percent for the Minh Phu Group, which results in three consecutive years of no dumping, and the Minh Phu Group has certified¹⁵ that it will not sell certain frozen warmwater shrimp in the future at less than fair value, the Department is revoking the AD Order with respect to the Minh Phu Group, for entries made on or after July 18, 2016. The Department's practice with respect to revocation of companies from an antidumping duty order is to exclude companies in specific producer-exporter combinations.¹⁶ Accordingly, the Department will instruct U.S. Customs and Border Protection ("CBP") to liquidate, without regard to antidumping duties, entries of certain frozen warmwater shrimp, produced and exported by the Minh Phu Group¹⁷ which were entered,

¹⁵ See Memorandum to the File, from Irene Gorelik, Senior Analyst, re: "Placing AR4 Documents on the Record of DS429," dated May 20, 2016, at .pdf page 15.

¹⁶ See, e.g., Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Fifth Antidumping Duty Administrative Review and Final Results of the Seventh New Shipper Review, 68 FR 25861 (May 14, 2003) and accompanying Issues and Decision Memorandum at Comment 1. See also Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China, 69 FR 70997, 71004 (December 8, 2004), where the Department stated that "the Department does not require any cash deposit or posting of a bond for Zhanjiang Guolian when the subject merchandise is produced and exported by Zhanjiang Guolian." Subsequently, in the PRC Shrimp Order, the Department stated that "pursuant to 735(c)(1)(B) of the Act, we will instruct CBP to suspend liquidation of all entries of certain frozen warmwater shrimp and prawns from the PRC (except merchandise *produced and exported* by Zhanjiang Guolian because this company has a *de minimis* margin)" (emphasis added). See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China, 70 FR 5149, 5152 (February 1, 2005) ("PRC Shrimp Order").

¹⁷ Revocation for the Minh Phu Group is specific to merchandise produced and exported by: (1) Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.), (2) Minh Phu Seafood Corp., (3) Minh Phu Seafood Corporation, (4) Minh Phu Seafood Pte, (5) Minh Qui Seafood, (6) Minh Qui Seafood Co., Ltd., (7) Minh Qui, (8) Minh Phat Seafood Co., Ltd., (9) Minh Phat, (10) Minh Phat Seafood, (11) Minh Phat Seafood Corp., (12) Minh Phu Hau Giang Seafood Joint Stock Company, (13) Minh Phu Hau Giang Seafood Co., Ltd., (14) Minh Phu Hau Giang Seafood Corp., and (15) Minh Phu Hau Giang Seafood Processing Co., Ltd.

or withdrawn from warehouse, for consumption on or after July 18, 2016. Furthermore, the Department will instruct CBP to discontinue the suspension of liquidation and the collection of cash deposits for estimated antidumping duties for entries of certain frozen warmwater shrimp produced and exported by the Minh Phu Group. The Department will instruct CBP to continue to collect cash deposits for estimated antidumping duties from other Vietnamese exporters as the AD Order, in whole, has not been revoked. Furthermore, the Department will require the Minh Phu Group and its importers to participate in a certification requirement for those entries which are no longer subject to the AD Order, as discussed in the 129 Final Determination.¹⁸

This final determination is issued and published in accordance with section 129(c)(2)(A) of the URAA.

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

Dated: July 18, 2016.

¹⁸ See 129 Final Determination Memo at 6 and Appendix.

Appendix

List of Issues in the 129 Final Determination

- I.** Summary
- II.** Background
- III.** Discussion of the Issues
Comment 1: Company Names to be Revoked from the AD Order
- IV.** Section 129 Final Determination
- V.** Revocation of the Minh Phu Group
- VI.** Recommendation

[FR Doc. 2016-17383 Filed: 7/21/2016 8:45 am; Publication Date: 7/22/2016]